

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC J. LIVELY,

Petitioner,

v.

S. PEERY,

Respondent.

No. 2:21-cv-2203 TLN AC P

ORDER

By order filed December 6, 2021, petitioner was ordered to notify the court whether he would like to voluntarily dismiss the petition or convert this action to a civil rights complaint under 42 U.S.C. § 1983. ECF No. 3. Petitioner has now filed a response in which he makes various allegations regarding conditions at the prison. ECF No. 4. He also states that he did not file the petition and implies that he is not interested in pursuing a civil action in this court; he does not, however, explicitly request the action be dismissed. Id. at 7-9. Petitioner will therefore be required clarify whether he is seeking to have this action dismissed.<sup>1</sup>

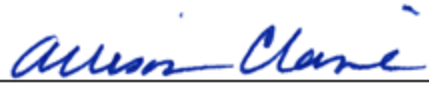
Accordingly, IT IS HEREBY ORDERED that within fourteen days of the service of this order, petitioner shall return the attached form notifying the court how he would like to proceed.

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<sup>1</sup> It appears that petitioner may be concerned that he will be charged a filing fee or that this action will be counted as a strike. ECF No. 4 at 8. Petitioner is informed that if he chooses to voluntarily dismiss the action he will not be charged a filing fee and the action will not be deemed a strike under 28 U.S.C. § 1915(g).

1 Failure to return the attached form will result in a recommendation that the petition be dismissed  
2 for lack of habeas jurisdiction.

3 DATED: December 22, 2021

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5 ALLISON CLAIRE  
6 UNITED STATES MAGISTRATE JUDGE  
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PETITIONER'S NOTICE ON HOW TO  
PROCEED

Check one:

\_\_\_\_\_ Petitioner is voluntarily dismissing this action without prejudice pursuant to Federal Rule of Civil Procedure 41(a).

\_\_\_\_\_ Petitioner intends to continue with this action and file an amended complaint.

DATED: \_\_\_\_\_

\_\_\_\_\_  
ERIC J. LIVELY  
Petitioner pro se